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**MAR 31 2006**

**OFFICE OF PETITIONS**

Eli Lilly  
Patent Division  
PO Box 6288  
Indianapolis, IN 46206-6288

In re Application of  
Liebeschuetz et al.  
Application No. 10/030,188  
Filed: Feb. 4, 2002

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: **DECISION GRANTING PETITION**  
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This decision is in response to applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE 37 C.F.R. 1.705(b)" timely filed. Applicants' request that the patent term adjustment at the time of the notice of allowance be adjusted to reflect 130 days.

The application for patent term adjustment is **GRANTED**. The Office will adjust the PTA calculation to reflect this decision.

Applicants assert that the Office erred in not granting a PTA delay of 130 days for failing to initially act upon the application within fourteen months of the filing date of the application under 37 CFR 1.702(a)(1). Applicants assert that this was the only delay in the application, that they did not fail to engage in any reasonable efforts to conclude prosecution of the application, and they no terminal disclaimer was filed in the application.

Applicants' arguments are persuasive. A review of the file history reflects that the Office did not meet the requirement of 37 CFR 1.702(a)(1) within fourteen months as asserted by applicants. The Office improperly entered the response to the restriction requirement as September 13, 2002 rather than the actual date of September 13, 2003. Accordingly, Office did treated the fourteen month requirement as having occurred prior to September 13, 2002. However, the correct history reflects that the Office mailed the restriction requirement on August 12, 2003 and that applicants responded on September 13, 2003. Accordingly, the 211 days of PTA and the 297 day reduction entered into the PTA calculation are incorrect. Accordingly, the only delay in the application was from the period beginning on April 5, 2002<sup>1</sup> and ending on August 12, 2003, a 130 day administrative delay under 37 CFR 1.702(a)(1).

After the mailing of this Office action, the file will be forwarded to the Office of Patent Publication for a prompt issuance of the patent. Any delays in issuing the application within four

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<sup>1</sup>April 5, 2003 is the day after the 14th month deadline under 37 CFR 1.702(a)(1).

months of the payment of the issue fee and all other requirements being satisfied will be added at the time of the issuance of the patent and will be reflected in the issue notification letter that is mailed to applicant.

The \$200.00 application fee will be charged to deposit account No 50-1230. No additional fees are required;

Any questions directed to this application should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner for Patent  
Examination Policy

cc: Copy of Adjusted PAIR calculation